

H.11 CONFLICT OF INTEREST

- a. General: It is essential that the QIO and the services provided under this contract be free, to the greatest extent possible, of all conflicts of interest. Except as provided below, the Contracting Officer shall not enter into a contract with an Offeror or maintain a contract with a QIO that the Contracting Officer determines has, or has the potential for, an unresolved conflict of interest.
- b. Disclosure: QIOs must disclose all actual, apparent and potential conflicts of interest to the Contracting Officer during the term of the contract in accordance with paragraph H.11.c. below. The QIO shall have programs in place to identify, evaluate and mitigate all actual, apparent and potential conflicts of interest that preclude, or would appear to preclude, the QIO from rendering impartial assistance or advice on work performed for this contract, or the QIO's objectivity in performing the contract work is or might be otherwise impaired, or the QIO has or obtains an unfair competitive advantage. The QIO's Conflict of Interest Certificate, that includes the QIO's plan to mitigate all actual, apparent and potential conflicts of interest identified during the term of the contract and certification that all work to be performed under this contract is free of unresolved conflicts of interest will be incorporated into the contract.
- c. Conflict of interest identification:
 1. Definitions: As used in this subpart, the following definitions apply:
 - (a) Financial relationship means—
 - (1) A direct or indirect ownership or investment interest (including an option or nonvested interest) in any entity that exists through equity, debt, or other means and includes any indirect ownership or investment interest no matter how many levels removed from a direct interest; or
 - (2) A compensation arrangement with an entity.
 - (b) Conflict of interest—

Conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
 - (c) Person/entity— means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
 - (d) Provider of services— any institution or entity that directly provides or supplies health care services or supplies for which payment may be made in whole or in part under Title XVIII of the Act.

- (e) Payor organization— any organization other than a self-insured employer, which makes payments directly or indirectly to health care practitioners or providers whose health care services are reviewed by the organization or would be reviewed by the organization if it entered into a QIO contract.
- (f) Health plan— any organization that furnishes or arranges under agreement or contracts with health care providers for the furnishing of items or services to enrollees in exchange for a premium or a fee.

For purposes of the QIO, the activities and relationships described include those of the Offeror or QIO itself and other business related to it and those of officers, directors (including medical directors), managers, and subcontractors.

2. Identification of conflict of interest:

- (a) The Contracting Officer determines that an Offeror or QIO has a conflict of interest, or the potential for the conflict exists, if-
 - (1) The Offeror or QIO is an entity described in paragraph H.11.c.2(c) of this section; or
 - (2) The Offeror or QIO has a present, or establishes a future, direct or indirect financial relationship with an entity described in paragraph H.11.c.2(c) of this section.
- (b) A financial relationship may exist either—
 - (1) Through an Offeror's or QIO's parent company(ies), subsidiaries, affiliates, subcontractors, or current clients; or
 - (2) From the activities and relationships of the officers, directors (including medical directors), or managers of the Offeror or QIO and may be either direct or indirect. An officer, director, or manager has an indirect financial relationship if an ownership or investment interest is held in the name of another but provides benefits to the officer, director, or manager.

Examples of indirect financial relationships are, but are not limited to, holdings in the name of a spouse or dependent child of the officer, director, or manager and holdings of other relatives who reside with the officer, director, or manager.

- (c) For the purpose of identifying entities with actual, potential or apparent conflicts of interest, at minimum the entity is one that—
 - (1) Would review or does review, under the contract, services furnished by a provider or supplier within the state;

- (2) Prepared work or is under contract to prepare work that would be reviewed under the QIO contract;
 - (3) Is affiliated, as that term is explained in FAR 19.101, with a provider or supplier to be reviewed under the contract;
 - (4) Is affiliated with a provider of services, payor organization or health plan as described in the Social Security Act [42 U.S.C. 1320c–2], Sections 1153(b)(2)(A) and (3)(A);
 - (5) Is a provider of services located inside of the area for which the QIO is required to perform services under the terms of this contract;
 - (6) Is a payor organization that has a contract with the Federal government to perform services as a Medicare Carrier, Medicare Intermediary or Medicare Administrative Contractor inside of the area for which the QIO is required to perform services under the terms of this contract; and
 - (7) Is a health plan located in the area for which the QIO is required to perform services under the terms of the contract.
- (d) The Contracting Officer may determine that an Offeror or QIO has a conflict of interest, or the potential for a conflict exists, based on the following:
- (1) Apparent conflicts of interest. An apparent conflict of interest exists if a person believes that the Offeror or QIO would have a conflict of interest in performing the requirements of a contract under this subpart. No inappropriate action by the Offeror or QIO is necessary for an apparent conflict of interest to exist.
 - (2) Other contracts and grants with the Federal Government, including but not limited to, Medicaid, Health Information Exchange, Regional Extension Center, Health Information Technology, or the Beacon Community Program .
3. Exception. The Contracting Officer may contract with an Offeror or QIO that has an unresolved conflict of interest if the Contracting Officer determines that it is in the best interest of the Government to do so. This may require a waiver.
4. Offeror's or QIO's responsibility with regard to subcontractors. An Offeror or QIO is responsible for determining whether a conflict of interest exists in any of its proposed or actual subcontractors at any tier and is responsible for ensuring that the subcontractors have mitigated any conflict of interest or potential conflict of interest. The Contracting Officer shall be notified of such identifications for a determination in accordance with H.11.b.

A QIO shall maintain documentation necessary to support its determination that its subcontractors have mitigated any actual, potential or apparent conflict of interest. A

QIO may require its subcontractors to follow the procedures for identifying, evaluating and disclosing conflicts of interest and potential conflicts of interest as contained herein.

5. Post-award conflicts of interest.

(a) In addition to the conflicts identified in this section regardless of when such conflict may arise, the Contracting Officer considers that a conflict of interest has occurred if during the term of the contract—

(1) The QIO receives any fee, compensation, gift, payment of expenses, or any other thing of value from any entity that is reviewed or contacted during the normal course of performing activities under the QIO contract; or

(2) The Contracting Officer determines that the QIO's activities are creating a conflict of interest.

(b) In the event the Contracting Officer determines that a conflict of interest exists during the term of the contract, the Contracting Officer may take action including, but not limited to:

(1) Not renewing the contract for an additional term;

(2) Modifying the contract; or

(3) Terminating the contract.

d. Conflict of interest evaluation:

1. Disclosure. Offerors that wish to be eligible for the award of a QIO contract under this subpart and QIO contractors, must submit, at times specified in paragraph H.11.d.2. of this section, a Conflicts of Interest Certificate. The Certificate must contain the information specified in paragraphs H.11.d.1 (a) through (g) of this section as follows:

(a) A description of all business or contractual relationships or activities that the QIO's compliance officer has determined could be viewed as a conflict of interest;

(b) A description of the methods the Offeror or QIO will apply to mitigate any situations listed in the Certificate that could be identified as a conflict of interest;

(c) A description of the Offeror's or QIO's program to monitor its compliance and the compliance of its proposed and actual subcontractors with the conflict of interest requirements as identified in the relevant solicitation;

- (d) A description of all other financial interests and/or contracts held by the QIO, its parent companies, subsidiaries or other affiliated entities;
- (e) An affirmation, using language provided below, signed and dated by an official authorized to bind the QIO as well as the CEO, CFO and COO individually:

I, (Name and Title), certify that to the best of my knowledge and belief: 1) I am an official authorized to bind the entity; 2) the information contained in the Conflict of Interest Certificate is true and accurate as of (Date) ; and 3) I understand that the Contracting Officer may consider any deception or omission in this Certificate to be grounds for non-consideration for contract award, or modification, nonrenewal or termination of the current contract, and/or other contract or legal action.

An Offeror shall submit an affirmation certifying the information to be true and accurate as of the date the proposal is submitted. Upon award, the QIO shall submit an updated affirmation, if necessary, certifying the information to be accurate as of the date of contract award.

- (f) Corporate and organizational structure;
- (g) Financial interests in other entities, including the following:
 - (1) Percentage of ownership in any other entity;
 - (2) Income generated from other sources;
 - (3) A list of current or known future contracts or arrangements, regardless of size, with any--
 - (i) Insurance organization or subcontractor of an insurance organization; or
 - (ii) Providers or suppliers furnishing health services for which payment may be made under the Medicare program;
 - (4) In the case of contracts or arrangements identified in accordance with paragraph H.11.d.1(g)(3) of this section, the dollar amount of the contracts or arrangements, the type of work performed, and the period of performance; and
 - (5) The following information for all of the Offeror's or QIO's officers, directors (including medical directors), and managers who would be, or are involved with, the performance of this QIO contract:
 - (i) The information required under paragraphs H.11.d.1 (a), H.11.d.1(g)(3) and H.11.d.1(g)(4) of this section;
 - (i) The information specified in paragraphs H.11.d.1(g)(1) and H.11.d.1(g)(2) of this section.

2. When disclosure is made. The Conflicts of Interest Certificate is submitted—

- (a) With the Offeror's or QIO's proposal;
- (b) When the Contracting Officer requests a revision in the Certificate;
- (c) Annually on the second Friday of months 13 and 25 following contract award;
- (d) At least 45 days before any change in the information submitted in accordance with paragraph H.11.d.1 of this section; and
- (e) As part of the annual conflict of interest certification by an independent auditor.

3. Evaluation and Audit.

- (a) Evaluation: The Contracting Officer evaluates actual, potential or apparent conflicts of interest and potential conflicts, using the information provided in the Conflicts of Interest Certificate, and information from other sources in order to promote the effective and efficient administration of the QIO program. The Contracting Officer will evaluate the plan proposed to mitigate the conflict of interest to determine if the mitigation plan will allow the QIO to render impartial assistance or advice to the Government; or the QIO's objectivity in performing the contract work is not or will not be otherwise impaired; or the QIO will not or has not obtained an unfair competitive advantage.
- (b) Compliance Audit: The QIO shall submit an Organizational Conflict of Interest (COI) Certificate to the Contracting Officer annually on the second Friday of months 13 and 25 following contract award (Annual COI Certificate). The Government reserves the right to conduct a COI compliance audit for the period reported in the Annual COI Certificate. If the Government's compliance audit results in any finding, including but not limited to the QIO failed to report a conflict of interest, or a reported conflict of interest mitigation plan was not enforced or otherwise is inconsistent with the QIO COI Certificate, then at the Government's discretion, the QIO shall be notified and required to submit:
 - (1) Clarification on the audit findings; and/or
 - (2) A revised Annual COI Certificate to the Contracting Officer.

4. Protection of proprietary information disclosed.

- (a) CMS protects disclosed proprietary information as allowed under the Freedom of Information Act (5 U.S.C. 552).
- (b) The Contracting Officer requires signed statements from CMS personnel with access to proprietary information that prohibits personal use during the procurement process and term of the contract.

e. Conflict of Interest Resolution: Resolution of a conflict of interest is a determination that:

1. The conflict has been mitigated;
2. The conflict precludes award of a contract to the Offeror or QIO;
3. The conflict requires that the Contracting Officer modify an existing contract;
4. The conflict requires that the Contracting Officer terminate an existing contract; or
5. It is in the best interest of the Government to contract with the Offeror or QIO even though the conflict exists.

Comment [C1]: Section L is set forth in a separate document and therefore deleted.

Comment [C2]: Section M was added to the separate Section L document and therefore deleted.